

## RESTAURANTS WITHIN THE CONTEXT OF NEIGHBOURHOODS

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### EXECUTIVE SUMMARY

This report responds to Council's direction for Administration to address industry concerns regarding opportunities for neighbourhood scaled restaurants as well as community concerns regarding the potential negative impacts of restaurants. Administration has received industry feedback that current land use bylaw rules are prohibiting the development of financially feasible restaurants within the context of neighbourhoods. At the same time Administration has received feedback that some restaurants are not functioning like a typical restaurant and operate in a manner typical of bars and nightclubs. In response to stakeholder feedback and further research, Administration is proposing to establish a new restaurant use definition for inclusion in the Land Use Bylaw 1P2007 with specific recommendations on characteristics and rules for that new use.

### ADMINISTRATION RECOMMENDATION(S)

That the SPC on Planning and Urban Development recommends that Council:

1. Approve the recommended option to create a new restaurant use definition; and
2. Direct Administration to return to Calgary Planning Commission no later than the end of 2014 Q4 with proposed amendments to Land Use Bylaw 1P2007.

### RECOMMENDATION OF THE SPC ON PLANNING AND URBAN DEVELOPMENT, DATED 2014 SEPTEMBER 10:

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That Council:

1. Approve the recommended option **of the creation of a new "Neighborhood" restaurant use definition as proposed in Attachment 2 with the inclusion of:**
  - a) **A better defined "Entertainment Area" definition."**
2. Direct Administration to return to Calgary Planning Commission no later than the end of 2014 Q4 with proposed amendments to Land Use Bylaw 1P2007.
3. **Direct Administration, with respect to Attachment 2 of Report PUD2014-0610, consider replacing bullet 4 "Mandated closing times" and explore mandating that the kitchen remains open until one hour before closing as an alternative regulatory approach.**

Excerpt from the Minutes of the Regular Meeting of the SPC on Planning and Urban Development, held 2014 September 10:

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"AMENDMENT, Moved by Councillor Carra, that Administration Recommendation 1 contained in Report PUD2014-0610, be amended, by deleting the words "to create a new restaurant use definition" following the words "Approve the recommended option" and by substituting the words "of the creation of a new "Neighborhood" restaurant use definition as proposed in Attachment 2 with the inclusion of:

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- a) A better defined “Entertainment Area” definition.”

CARRIED

AMENDMENT, Moved by Councillor Carra, that the Administration Recommendations contained in Report PUD2014-0610 be amended by adding a new Recommendation 3 as follows:

“3. Direct Administration, with respect to Attachment 2 of Report PUD2014-0610, consider replacing bullet 4 “Mandated closing times” and explore mandating that the kitchen remains open until one hour before closing as an alternative regulatory approach.”

Opposed: R. Pootmans

CARRIED”

### PREVIOUS COUNCIL DIRECTION / POLICY

On 2013 July 29, Council adopted Councillor Carra’s NM2013-22, Restaurant Licensed and Food Service Only – Neighbourhood, directing Administration to “investigate amendments to Bylaw 1P2007 to either amend an existing or establish a new restaurant district large enough to be viable for operators and unconstrained by regulations incompatible with the achievement of MDP targets for the development and redevelopment of neighbourhood-scaled complete communities.” Administration recommended no changes to the Land Use Bylaw in response to this Notice of Motion.

On 2014 January 27, Council received PUD2013-0471 and directed Administration to “expand the size maximum for small restaurants from 75 square metres to 150 square metres, along with consideration of parking, adjacency and permitted versus discretionary uses; or establish a new “neighbourhood restaurant” use for inclusion in the Land Use Bylaw 1P2007.” Council also directed Administration to “coordinate safeguards for this district so that desired restaurant uses cannot devolve into drinking establishments and/or nightclubs within the context of neighbourhoods.”

### BACKGROUND

The Land Use Bylaw (LUB) divides eating and drinking uses in to several categories to define the differences between how establishments operate and the types of products they offer. Currently the LUB has three categories for establishments where the primary service is food: Food Service Only, Licensed, and Take-out. Food Service Only and Licensed are further divided in to three size categories: Small, Medium, and Large:

- Small = 75 square metres or less
- Medium = greater than 75 square metres but less than 300 square metres
- Large = 300 square metres or greater

The prescribed sizes are a characteristic of the use definition and cannot be relaxed by the Development Authority. Size is based on the public area of the restaurant, which is essentially

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the dining area. This is the best measure of the intensity of a restaurant. Public area does not include the kitchen, washrooms, offices, staff rooms, hallways, corridors or entrance vestibules.

Depending on interior layout and how the restaurant functions the relationship between public area and actual number of diners can vary from 1.2 square metres to 2 square metres per person. A restaurant of 75 square metres of public area could reasonably have anywhere from 35-60 persons in the dining area at any given time.

An underlying principle of the LUB is that not all developments or uses are appropriate in all areas. This is implemented with land use districts. In those districts some uses are permitted, some are discretionary and some uses are not listed at all. This communicates that in a particular district some uses are generally always appropriate (permitted), some may be appropriate (discretionary), and some uses are never appropriate. Following this rationale, restaurants are listed or not listed in districts based on the type of restaurant (licensed or food service only, size) and the purpose of the district.

The commercial group of districts are organized based on magnitude of consumer draw or catchments area:

- Neighbourhood (serves the local area, usually one neighbourhood)
  - C-N1, C-N2
- Community (several surrounding communities)
  - C-C1, C-C2
- Corridor (responds to linear corridor development)
  - C-COR1, C-COR2, C-COR3
- Regional (city or greater draw)
  - C-R1, C-R2, C-R3

Generally, the greater the customer catchment area, the larger the magnitude of goods and services provided (larger stores, larger choice of products and services). There are examples however of small restaurants located in neighbourhood districts that have a regional draw. It is important to note that a neighbourhood in the geographical sense contains a variety of commercial districts. While the LUB contains commercial districts organized as “Neighbourhood”, “Community”, “Corridor” and “Regional”, neighbourhoods are formed by collections of various commercial districts.

Aside from sizes, restaurants also have rules such as minimum required parking and whether minors are allowed on the premises or not. Some restaurants also have additional rules in particular districts concerning setbacks from residential areas, and rules addressing the interface between the restaurant and adjacent residential areas. Rules can be relaxed by the Development Authority as part of the development permit process. This may be done to address existing site conditions and building form. Relaxations of LUB rules are advertised and may constitute reasons to appeal the decision of the Development Authority.

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Apart from the neighbourhood districts, all other commercial districts allow restaurants larger than small (larger than 75 square metres of public area). Depending on the district and type of restaurant, it may be a permitted or discretionary use.

The current approach to managing restaurants was a new feature of the LUB when adopted in 2008. Prior to that, in LUB 2P80, there were fewer definitions and rules for restaurants. The similarity between the two LUB's is that both limit the size of a restaurant in a neighbourhood context. 2P80 achieved this by placing size limitations and interface rules in the specific neighbourhood districts. This allowed the Development Authority to relax the size of a restaurant over the specified size if there was sufficient planning merit in doing so. 1P2007 limits the size by only allowing a small restaurant in the neighbourhood districts (C-N1 and C-N2). This was done as these two districts occur on parcels that typically have physical site constraints and are intended for small scale commercial development in keeping with the scale of nearby residential areas. C-N districts are typically completely imbedded within low density residential communities and the impacts of a medium sized restaurant are not appropriate for that context. Below is a table outlining the commercial districts small and medium restaurants are located within:

P = permitted D = discretionary New buildings are always discretionary	Districts								
	Neighbourhood	Community	Regional			Corridor			Office
	C-N1 and C-N2	C-C1 and C-C2	C-R1	C-R2	C-R3	C-COR1	C-COR2	C-COR3	C-O
<b>Restaurant: Food Service Only – Small</b>	P	P	D	P	P	P	P	P	P
<b>Restaurant: Licensed – Small</b>	D	D	D	P	P	D	P	P	P
<b>Restaurant: Food Service Only – Medium</b>		P	D	P	P	D	P	P	D
<b>Restaurant: Licensed – Medium</b>		D	D	P	P	D	D	P	D

Feedback from industry suggested that restaurant rules developed for 1P2007 do not reflect current industry trends and needs. It was suggested that typically a restaurant must be in the 150 square metres public area size to be financially viable. This would currently be considered a medium restaurant which is available in all but two commercial districts. In addition to a lack of interest in small restaurants, industry has also conveyed that the rules associated with medium restaurants are limiting opportunities for restaurant development. While there is no data outlining “missed” restaurant opportunities, Administration has compiled the following development permit data:

Since 2008 June 01 The City has received 640 development permit applications for a restaurant small or medium, food service or licensed. Of those, 60% were for small restaurants (260 Small – Food Service Only and 130 Small – Licensed). This suggests that there are numerous examples of small restaurants that have been operating in Calgary neighbourhoods for many years.

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### INVESTIGATION: ALTERNATIVES AND ANALYSIS

Two options exist to address Council's direction.

1. Expand the size of a small restaurant

This option is to increase the size definition of a small restaurant while taking in to consideration parking requirements, residential adjacency, and whether or not it would be a permitted or discretionary use. This approach presents multiple challenges. In order to address all facets of Council's direction, a small restaurant would not only have to be amended to allow for a larger size and possibly re-arranged amongst the districts, it would also have to contain rules to address social disorder. In essence the definition and rules for a small restaurant would be re-written in a way that a new use would be created de facto (essentially would result in Option 2 as a result of the required changes). Extensively re-defining a small restaurant could render many existing small restaurants non-conforming. In relation to medium and large restaurants the new small restaurant would have completely different rules than the rules for medium and large restaurants, which may add confusion to which use a restaurant would apply for. Finally this report responds to restaurants within the context of neighbourhoods and as small restaurants are listed uses in Industrial, Special Purpose and Multi-residential districts these changes would have implications outside of the commercial districts.

2. Establish a new restaurant use definition

This approach provides for the greatest opportunity to capture the entire intent of Council's direction. It would allow for previously approved restaurants to continue operating as they currently are. The use could be constructed in a manner to distinguish itself from the current restaurant categories, so that it would be clearer which use would be appropriate. The development of a new use definition would not include the removal of existing use definitions or retro-actively alter previous development decisions.

In addition to proposed changes to the Land Use Bylaw (Option 1 or 2 above), Council has directed Administration to coordinate safeguards so that desired restaurant uses cannot devolve into drinking establishments and/or nightclubs within the context of neighbourhoods. In addition to planning approval restaurants require a municipal business license. If the restaurant is licensed it requires an Alberta Gaming and Liquor Commission (AGLC) license. These processes are outlined in Attachment 1. Issues with operators are handled by business license and development enforcement who typically become involved with a restaurant after complaints are received. Additionally, establishing a new restaurant use definition (Option 2) would allow for some of the anticipated issues to be mitigated at the front of the process. This would include incorporating several characteristics within the new use definition such as removing entertainment area, mandated closing time, and requiring that minors must never be prohibited from the premises.

#### Recommended Option

Based on the options provided by Council, Administration recommends the creation of a new restaurant use definition with specific components as outlined in the table on the next page. These criteria are discussed in greater detail in Attachment 2.

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Recommended components of new use definition	Characteristic/Rule	Relaxable by Development Authority
150 sq m public area	Characteristic	Not relaxable
No entertainment area	Characteristic	Not relaxable
Minors must be allowed on premises at all times	Characteristic	Not relaxable
Mandated closing times	Characteristic	Not relaxable
Reduced parking rate: 1.7 stalls per 10 sq m of public area	Rule	Relaxable
Residential interface rules: No 45 metre setback	Rule	Relaxable
Permitted use	n/a	n/a

Council direction acknowledged that neighbourhood restaurants are a desired commercial activity. Therefore Administration’s approach was to develop rules that would enable a new use as a permitted use by mitigating community concerns up front. It is important to note that in commercial districts, permitted uses become discretionary when located in new buildings. Historically, eating and drinking uses that involve liquor are treated as discretionary uses as Council has expressed concern over the function of these uses and that they require more specific oversight from the Development Authority.

Administration recommends that this new restaurant use definition be a permitted use in commercial districts. However, if all of the above characteristics and rules are not approved as recommended, Administration would not be supportive of this new restaurant use being a permitted use.

**Stakeholder Engagement, Research and Communication**

Administration conducted extensive engagement with industry, community associations, and community members. Between industry and community stakeholders 61 persons/organizations participated in various capacities. Meeting invitations were sent to every community association, BRZ’s, and an industry list developed in collaboration with key industry members. Industry representation included developers and restaurant operators.

Meetings were held in multiple phases with industry and community stakeholders. The first set were intended to inform and educate stakeholders on how restaurants are currently managed in the LUB but also provided opportunity to receive initial feedback from both groups concerning their issues and ideas regarding this project. Generally, feedback was centred on specific development permit applications or specific restaurants/operators. Administration outlined the options presented by Council and support was received to draft a new use definition.

After analyzing the initial comments, Administration produced a survey/feedback form that captured the common concepts presented by stakeholders and built upon the information shared in the initial meetings. This survey was sent out to the stakeholder group for feedback to crystallize what issues were critical to both groups in an attempt to reach some kind of common ground and finalize Administration’s recommendations.

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Based on the feedback received Administration began formulating what a new use may look like in terms of definitions and rules. A final meeting was held with community and industry representatives present to discuss what definitions and rules would be critical to future amendments. Feedback from this meeting was taken in to consideration to finalize the proposed recommendations as summarized in Attachment 3. Final letters of comments from stakeholders have been included in Attachment 4.

### **Strategic Alignment**

The policies and goals of the Municipal Development Plan (MDP) guide growth and change across the city as a whole and speak to the kind of city Calgarians aspire. They provide general direction across many types and scales of planning.

There are no specific policies in the MDP concerning restaurants or sizes. There are policies and goals which concern the general access to food, daily needs, and complete communities.

Increasing the opportunities for restaurants helps to implement the following policies in the Municipal Development Plan:

- Section 1.4.2 – Facilitating private sector investment: Buy-in and investment by the private sector market is critical to achieving the vision for growth and change in the city and direction and certainty to both business and communities, to support private sector investment to build housing, commercial and industrial developments.
- Section 2.1.2 (e) – Remain open to innovation and provide flexibility to accommodate the changing needs of business.
- Section 2.2.4(b)(iii) – Communities should be planned according to the following criteria for complete communities and provide: Neighbourhood stores, services and public facilities that meet day-to-day needs, within walking distance for most residents.

### **Social, Environmental, Economic (External)**

#### **Social**

Restaurants are popular places to socialize with friends and family. Restaurants can add vibrancy and activity to neighbourhoods and communities. They may serve to reinvigorate neighbourhoods in need of commercial activity. They may also be problematic and impose impacts on nearby residential areas such as parking spill over, noise, odour, and social disorder.

#### **Environmental**

Creating more development opportunities for restaurants in a neighbourhood context may result in more pedestrian activity and reduce dependence on motor vehicles. Conversely a popular restaurant may actually increase motor vehicle dependence and increase visitation from outside the immediate area as it is a destination restaurant.

#### **Economic (External)**

Restaurant development can be an indicator of employment levels and overall economic health. Restaurants make a strong contribution to the economy whether it is providing employment opportunities or attracting tourists.

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### Financial Capacity

#### Current and Future Operating Budget:

No impact

#### Current and Future Capital Budget:

No impact

### Risk Assessment

Adding another use definition adds another layer of complexity in order to address issues that can already be dealt with through existing process. All but two commercial districts allow for restaurants of 150 square metres. Neighbourhood districts are typically embedded within low density residential areas and are physically small sites similar in size to residential parcels. These impacts include parking and residential overspill, noise and operational issues. Creating a use definition that is characterized by neighbourhood sensitivity may suggest that the remaining existing restaurant uses are not concerned with neighbourhood sensitivities which would not be accurate.

Permitted uses that meet the rules of the LUB must be approved by the Development Authority and prevent Administration from providing specific oversight of the development. Essentially the opportunity to mitigate any potential impacts is done via use rules. A new restaurant use that is a permitted use will not be circulated to the respective community association or councillor's office that is affected by the development. Alternatively a discretionary use allows the Development Authority to manage the impacts and performance of the development, as well as receive feedback from affected stakeholders.

Finally a new use definition with such prescriptive rules sets a precedent for the level of involvement the LUB will have in terms of rules for operators. The LUB is concerned with the use of land or buildings, not the users themselves. Typically issues related to operators are managed through the licensing bylaw or by the operator on their own accord. Council's direction indicates "desired restaurant forms" which is difficult to regulate because there is nothing the LUB can do to regulate type of food, pricing, customers or even operators.

### REASON(S) FOR RECOMMENDATION(S):

Based on Council direction, Administration recommends the creation of a new restaurant use definition to be a permitted use in commercial districts along with specific characteristics and rules as follows: reduced parking rates, 150 square metre public area, no entertainment area, no residential interface setbacks, mandated closing times, and the requirement that minors be allowed at all times. The creation of this new restaurant use definition will address industry concerns over timelines and community involvement. The recommended rules associated with the proposed use will address community concerns that cannot be relaxed, since community representatives will not be circulated as part of a permitted use approval.

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**ATTACHMENT(S)**

1. Business and AGLC License Information
2. Proposed rules/characteristics for new restaurant use definition
3. Summary of stakeholder feedback
4. Stakeholder correspondence